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SUBJECT: U.S.-EU JHA SENIOR LEVEL MEETING, STOCKHOLM, JULY 9-10, 2009

¶11. (SBU) Summary. U.S. and EU delegations met July 9 and 10 in Stockholm for the semiannual U.S.-EU Justice and Home Affairs Informal Senior Level Meeting. The meeting was unusually lively, substantive and outcome oriented, covering a lengthy agenda in an efficient manner. Delegates were well prepared and achieved concrete results on nearly all the topics on the agenda, from agreements to exchange papers or schedule follow-on experts' meetings, to commitments to enhance cooperation or improve the efficiency of regular U.S.-EU engagements. Throughout the meeting, the Swedish Presidency chair demonstrated a proactive and positive approach to the engagement and sought to identify opportunities where the U.S. and EU could move forward during the Swedish Presidency. End Summary.

Delegations

¶12. (U) The U.S. delegation was led by Deputy Assistant Secretary of State Elizabeth Verville and Deputy Assistant Attorney General Bruce Swartz. The EU delegation was led by Lars Werkstrom, Director General for International Affairs, Ministry of Justice, and Ola Henrikson, Director General for Migration and Asylum Policy, Ministry of Justice, representing the Swedish EU Presidency; Arturo Avello, Director General for International Affairs, Spanish Ministry of the Interior, on behalf of the incoming EU Presidency; Monique Pariat, Director, General Affairs, DG JLS, European Commission; and Rafael Fernandez-Pita y Gonzalez, Deputy Director General, General Secretariat of the Council of the European Union. Swedish Presidency Priorities

¶13. (U) The Swedish Presidency briefly outlined its JHA priorities for the next six months, focusing on the adoption of the EU's next five-year plan in the areas of justice and home affairs, dubbed the Stockholm Program to succeed the previous Hague Program. The new program will have a central focus on individual rights but will also include attention to safeguarding security. This will include new procedural rights for criminal suspects (including requiring translation and interpretation assistance to defendants where needed), the completion of a new Schengen Information System (SIS II) and new legislation on trafficking in persons and the sexual exploitation of children. The Presidency will also contribute toward the development of a common asylum system, and introduce a Visa Information System (VIS) in December. External relations with third countries will be a large component of this program, according to Sweden.

¶14. (SBU) The U.S. also outlined its priorities of concluding an agreement on the High Level Contact Group Principles on information exchange in JHA matters and data protection, exchanging instruments

of ratification with the EU on the US-EU Mutual Legal Assistance and Extradition Treaties, ensuring that the SECI (Southeast European Cooperation Initiative) charter is completed soon and in a manner that allows it to proceed effectively (i.e., protecting data without hamstringing with layers of bureaucracy) and multilateral cooperation on organized crime and corruption.

¶15. (SBU) The delegations discussed at length the EU proposal, previewed at the U.S.-EU JHA Ministerial Meeting in Prague in April, to develop a declaration on enhancing transatlantic relations in the area of justice and home affairs. The U.S. stressed the need to include concrete commitments for operationally focused cooperation in specific terrorism and transnational crime areas, and agreed to propose text in this regard. The group agreed to have their respective Brussels representatives prepare an initial draft.

Data protection/privacy

¶16. (SBU) The delegations agreed that the High Level Contact Group (HLCG) had almost finished its task. Only the issue of redress remains outstanding. The Swedish Presidency noted that the recent visit to Stockholm of the Department of Homeland Security new Chief Privacy Officer had been helpful. The EU offered to host a seminar October 1 in Brussels for representatives from the U.S., EU, and a small group of EU Member States for the purpose of gaining a better understanding of what redress opportunities are available in the U.S. and the Member States. The U.S. suggested that such a meeting include law enforcement practitioners as well as data privacy specialists and that the group also discusses criminal redress. A HLCG meeting has been scheduled for October 2 as a follow-up. Both sides expressed hope that this seminar would pave the way for completion of the HLCG principles in time for the October JHA Troika Ministerial meeting.

Mutual legal assistance and extradition

¶17. (SBU) The U.S. delegation welcomed the completion, since the

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last JHA Informal meeting in February, of MLA ratification procedures in all EU member states. Bilateral exchanges of the protocols of the instruments of ratification have taken place between the U.S. and eighteen of the twenty-seven EU Member States. The remaining exchanges are expected to be completed by September, readying the way to schedule the exchange of instruments between the U.S. and EU in the early fall, potentially on the margins of the U.S.-EU JHA Troika Ministerial meeting. Sweden stressed the importance of exchanging the instruments before the entry into force of the Lisbon Treaty, as structural changes occurring then would seriously complicate this process.

¶18. (SBU) Regarding implementation of the agreements, the U.S. pressed the importance of ensuring full application of the agreements and that all EU member states have the mechanisms in place to meet all the agreed-upon requirements, especially with respect to prompt responses to requests for mutual legal assistance and financial records information. The U.S. believes a discussion of the provision providing for joint investigative teams would be fruitful, taking into account Spain's experience with this mechanism in Europe. It was noted that the EUROJUST-EU-U.S. work group on preparing practitioners for the agreements' coming into force had drafted manuals, guidelines, and forms for use by prosecutors/investigating magistrates and criminal investigators. The work group had resolved to monitor implementation after entry into force of the agreements for purposes of determining where further support, training and assistance might be needed. As incoming Presidency country, Spain suggested that a practitioners' seminar be organized some months following the agreements' entry into force to assess the implementation and to provide additional training.

U.S.-EU Cooperation in the Balkans

¶19. (SBU) The U.S. noted that coordination between the EU and U.S. on our respective technical assistance to the Balkan countries has steadily progressed in recent years. At the February U.S.-EU JHA informal meeting, both sides discussed holding expert level discussions on our assistance in the region. Our experts have agreed to hold an initial video conference on Croatian assistance in late September/October. If this goes well, additional meetings could be

discussed. The European Commission (EC) agreed that our objectives are in sync, and look forward to the fall videoconference.

¶10. (SBU) On the Southeast European Cooperation Initiative (SECI), the U.S. expressed strong concern over the EU inappropriately having re-opened and re-directed the drafting of the new SECI charter (SELEC Convention). Specifically, EU representatives had side-tracked the nearly completed drafting of the convention by insisting on inserting a detailed list of data protection rules that were inappropriate given SECI's current or envisioned level of development. The U.S. expressed concern that the ongoing successful functioning of this extraordinary law enforcement collaborative might well be impaired by the eleventh hour insertion of these poorly-suited rules and requirements. It was agreed that the U.S.-EU cooperation needs to improve on SECI, so that the organization can continue to function as a linchpin for regional law enforcement cooperation. The EU took this message on board and both sides agreed to discuss this issue in more detail.

¶11. (SBU) On West Africa, the Swedish Presidency is planning a donor coordination meeting September 18, in Brussels. This meeting will include discussion on organized crime and trafficking in drugs, weapons, and human beings. The U.S., the UN, Interpol and other major donors will be invited. The U.S. praised the recent decisions to develop a series of DVCs to better coordinate technical assistance between the U.S. and EU in this region.

Cooperation at the UN

¶12. (SBU) The U.S. noted the close cooperation between the U.S. and EU in UN settings, particularly in promoting the global implementation of the UN Convention against Transnational Organized Crime (UNTOC) and the UN Convention against Corruption (UNCAC). Both sides need to continue to consult closely on what would be appropriate for a new mechanism for the UNTOC and the UNCAC. Consideration of such a mechanism was more urgently needed for the UNCAC as the next UNCAC Conference of States Parties will take place in November, in Doha. It is essential that this COSP secure adoption of a review mechanism, and the EU and U.S. need to stay closely aligned both in capitals and particularly at the negotiation level, in Vienna. The EU agreed to join in working with states that have

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seemed difficult during past UNCAC negotiations and agreed with the U.S. that this next COSP must lead to a review mechanism. The Commission in particular believes that public country reports should be included, perhaps with opt-outs for countries that remain opposed to this approach. Both the U.S. and EU pledged to continue to provide technical assistance towards countries seeking to implement both conventions, and to coordinate TOC assistance through the UNTOC technical working group on assistance.

Trafficking in Persons

¶13. (SBU) The Swedish Presidency noted the EU's current internal review of its new Framework Decision on trafficking in Human Beings (THB) - what in the U.S. is typically referred to as Trafficking in Persons (TIP). This new framework will underpin an EU conference on the external relations aspect of TIP in Brussels October 19-20, to which the U.S. will be invited. The U.S. informed that TIP is a high priority of the new U.S. Administration, and noted that the U.S. is very interested in closely coordinating with the EU on the issue of a potential UN Global Plan of Action to combat TIP. The U.S. is skeptical of the benefits of this exercise, and fear it could result in a weakening of the UN Protocol. Nevertheless, the U.S. will engage constructively in negotiations if this does take place. The EU agreed with the U.S. assessment, and identified the Swedish Presidency's mission in Brussels as the likely POC for coordination, along with the EU mission at the UN in New York. The U.S. noted the multiple facets of the human trafficking dossier that offer many avenues of potential transatlantic cooperation (e.g., detection, deterrence, investigation, prosecution, public awareness).

Cybercrime

¶14. (SBU) The delegations discussed the need to encourage greater

ratification of the Council of Europe (COE) Cybercrime convention, including among members of the EU and COE as well as non-EU or COE countries. The U.S. stressed the need to avoid negotiating a UN convention on cybercrime that would divert limited resources, delay implementation, and dilute important advances of the COE convention, and the EU agreed. The group agreed to report back on their respective efforts at the next U.S.-EU JHA Ministerial. Spain also expressed its support for the U.S. position.

Counterterrorism and security

¶15. (U) The Swedish Presidency announced plans to organize a seminar July 28-29 on radicalization in prisons, and invited the U.S. to participate. The U.S. noted special interest by the new Ambassador for Counterterrorism in the issues of countering violent extremism and terrorists' use of the internet for recruitment and radicalization.

¶16. (SBU) The next experts meeting on explosives is planned for November or December. The EU said that at the end of October it will invite a small number of experts to its task force meeting to discuss the science behind explosives. This is the follow-up to the very well received first experts meeting in December 2008 in Brussels, at which the U.S. was represented by FBI, DOJ, DHS, ATF, and State/DS.

Passenger Name Record

¶17. (SBU) The EU reported that six member states have not completed domestic ratification procedures of the 2007 U.S.-EU Passenger Name Record agreement. In preparation for the planned joint review of the agreement, the EU has provided a questionnaire to the U.S. Following the EC's postponement of the review from December 2008, the Department of Homeland Security has not yet proposed a date for the review, but the Commission expressed hope that this could take place as soon as possible. DHS reported significant progress with most major air carriers to migrate to the "push" system of PNR data to DHS rather than DHS "pulling" the data from carriers. The U.S. and EU agree as a goal to move from pull to push.

¶18. (SBU) In the area of critical infrastructure protection, the U.S. called for close coordination to address interdependencies both nationally and internationally as the EU makes progress on its Framework Decision, and stressed the importance of science and technology. The U.S. requested more information with respect to the EU's plans in the area of cyber-security which was addressed in a recent EC communication from DG InfoSys. The U.S. announced that October is Cyber Security Awareness month and it would be hosting a Meridian program in October, and invited broad participation from the EU, promising more details as the agenda is finalized.

¶19. (U) The U.S. briefly described the White House 60 day Cyberspace Review and its general findings. The Swedes announced the Euro Atlantic Stakeholders Conference (EASC 09) hosted jointly by Sweden and DHS on October 1-2 in Stockholm that will follow a

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regular EU forum on research on September 29-30 in Sweden.

¶20. (SBU) The Commission has formally communicated the 'EU Chemical, Biological, Radiological, and Nuclear (CBRN) Action Plan' to the Council of the European Union and the European Parliament. The action plan itself has no legal or budgetary authority--its provisions will only be given effect to the extent that they are authorized/funded by future EU action, or come under existing authorities. The Action Plan is based on the CBRN Task Force report issued in January. It addresses three main areas of work: prevention, detection, and preparedness/response. In addition, the Commission communicated an 'impact assessment' document and a document on best practices in CBRN security and response.

Visas and Migration

¶21. (SBU) The U.S. provided several updates on issues related to the Visa Waiver Program (VWP). The Electronic System for Travel Authorization (ESTA) is operating well, with an average 85 per cent compliance rate. The U.S. informed of its plans to look at possible elimination of the I-94 document in the not too distant future and moving from voluntary to enforced ESTA compliance. The EU expressed concern at this announcement, asking how the compliance rate would get from 85 to 100 per cent. The U.S. additionally reported that as of July 1, 2009, all travelers under the Visa Waiver Program must have e-passports or have a visa (in case of a temporary emergency

passport). The U.S. is conducting an outreach campaign to airlines, U.S. Customs and Border Protection (CBP) officers, and U.S. embassies and consulates abroad. On plans to develop a U.S. biometric exit system, the U.S. is in the process of implementing a Congressional requirement to conduct pilot tests. Results of these pilots are not yet available. Greece continues to make progress towards inclusion in the VWP; Greece recently signed an MOU, and a DHS-led VWP review team traveled to Greece the week of July 6.

¶22. (SBU) The U.S. noted that progress in the Congress on the Travel Promotion Act (TPA) bill has slowed down, but the bill is not dead. The U.S. understood the concerns of the EU with the bill's provision that would introduce a fee on ESTA, but urged that the EU keep the TPA and ESTA as separate and distinct issues. ESTA, as even the EU had concluded, is not tantamount to a U.S. visa; the lack of a fee is just one aspect of that.

¶23. (SBU) The U.S. announced continued progress regarding exchanges of letters with the original (pre-2008) VWP countries. The goal is to have the required information sharing agreements completed with all VWP members before they are scheduled to undergo periodic reviews. The EU announced that its next visa reciprocity report would be prepared in September.

¶24. (U) The EU restated its concern that travelers with HIV are ineligible under the VWP but acknowledged its understanding that the Department of Health and Human Services is responsible for the necessary rulemaking to bring U.S. law and regulations on HIV into conformity.

¶25. (U) The EU briefly discussed its global approach to migration, which it dubbed a comprehensive approach. The Swedish Presidency addressed growing synergies between development and migration policy and looks to the Athens meeting of the UN Global Forum on Migration as an opportunity for Europe and the U.S. to cooperate. The State Department's Bureau of Population Refugees and Migration would represent the U.S. at the next global forum on migration.

Border management

¶26. (SBU) The U.S. expressed its desire to begin implementation of the U.S.-Frontex working arrangement, noting that a delegation led by Frontex Executive Director Ilka Laitinen will visit Washington in August.

U.S.-EU JHA Troika Ministerial

¶27. (SBU) The EU asked the U.S. to confirm the proposed dates of October 27 and 28 for the U.S.-EU JHA Troika Ministerial meeting in Washington. Delegations discussed a list of potential topics for the Ministerial, including the declaration on transatlantic relations, the U.S.-EU extradition and mutual legal assistance agreements, VWP, data protection, reports on various seminars, counterterrorism, update on Guantanamo closing, trafficking in persons, update on the EU Stockholm Program, international cooperation, cybercrime, and corruption.

¶28. (U) This message was drafted by members of the U.S. delegation in association with Embassy Stockholm staff.

SILVERMAN